

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JERRY GRIFFIN, MICHELLE
BOLOTIN, MICHAEL SIENKIEWICZ,
AND JAMES B. OERDING,

Plaintiffs,

No. 2:19-cv-01477-MCE-DB
(and related cases)
No. 2:19-cv-01501-MCE-DB
No. 2:19-cv-01506-MCE-DB
No. 2:19-cv-01507-MCE-DB
No. 2:19-cv-01659-MCE-DB

ALEX PADILLA, in his official capacity
as Secretary of State of California.

Defendant.

AND RELATED CASES.

20 On July 30, 2019, California Governor Gavin Newsom signed into law the
21 Presidential Tax and Transparency Act (“the Act”), enacted as Senate Bill 27, which
22 requires, among other things, presidential candidates in the California primary to have
23 disclosed their federal tax returns for the previous five years as a precondition to
24 appearing on the State’s partisan primary ballot.¹ By way of the above-captioned related
25 actions, five sets of Plaintiffs seek to enjoin enforcement of that law by Defendants
26 Governor Newsom, Alex Padilla, California’s Secretary of State, and Xavier Becerra, in

¹ The Act was codified as Chapter 7 to Part 1 of Division 6 of the California Elections Code, §§ 6880 et seq.

1 his capacity as California Attorney General.² Plaintiffs are the incumbent President,
2 Donald J. Trump, along with his reelection campaign, a second Republican candidate for
3 President, Roque De La Fuente, both the Republican National Committee and its state
4 counterpart, the California Republican Party, and eight individual California voters,
5 including members of both the Republican, Democratic and Independent Parties.

6 According to all Plaintiffs, the Act violates the so-called Qualifications Clause of
7 the United States Constitution. U.S. Const., art. II, § 1, cl. 5 (“Qualifications Clause”).
8 Four of the five lawsuits further allege that the Act violates Plaintiffs’ First Amendment
9 rights to associate and/or to access the ballot, also guaranteed by the United States
10 Constitution. In addition, two of the actions take the position that the Act also violates
11 the Fourteenth Amendment’s Equal Protection Clause. Finally, the lawsuit filed on
12 behalf of President Trump and his campaign asserts that the Act’s provisions are
13 preempted by the Ethics in Government Act of 1978, 5 U.S.C.A. App. 4, §§ 101 et seq.
14 (“EIGA”), which requires that presidential candidates disclose certain financial
15 information.

16 The Court heard oral argument on September 19, 2019, and, at the hearing’s
17 conclusion, announced its tentative decision granting a preliminary injunction enjoining
18 application of the Act insofar as it pertains to presidential candidates. This written order
19 memorializes that ruling and supersedes any and all statements made by the Court at
20 that time. For the reasons set forth below, the requests for preliminary injunctive relief
21 are GRANTED.

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23 BACKGROUND

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25 In 1913, the Sixteenth Amendment to the United States Constitution was ratified
26 authorizing a national income tax to be implemented through the filing of individual tax
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28 ² Newsom, Becerra and Padilla will be collectively referred to in this Memorandum and Order as
“Defendants” or the “State” unless otherwise noted.

1 returns with the Internal Revenue Service. Since that time, there has never been a legal
2 requirement that any candidate for federal office disclose their tax returns as a
3 precondition to standing for election. The Act, which provides in relevant part as follows,
4 attempts to change that:

5 6883. (a) Notwithstanding any other law, the Secretary of
6 State shall not print the name of a candidate for President of
7 the United States on a primary election ballot, unless the
8 candidate, at least 98 days before the presidential primary
election, files with the Secretary of State copies of every
income tax return the candidate filed with the Internal Revenue
Service in the five most recent taxable years.

9 Cal. Elec. Code § 6883(a). It goes on to require the Secretary of State to publish a copy
10 of the candidate's personal tax returns on the Secretary's publicly available website,
11 after redacting the returns for privacy purposes. Id. at § 6884(c). Because the Act
12 applies only to primaries and not to the general election, however, independent and
13 certified write-in candidates are not required to disclose their tax returns as a condition of
14 running for President. Id. at §§ 8300, 8600.

15 The California Legislature formally explained its justification for passing the Act in
16 a purpose statement which reads:

17 [The] State of California has a strong interest in ensuring that
18 its voters make informed, educated choices in the voting
19 booth. To this end, the state has mandated that extensive
20 amounts of information be provided to voters, including county
and state voter information guide. The Legislature also finds
21 and declares that a Presidential candidate's income tax returns
provide voters with essential information regarding the
candidate's potential conflicts of interest, business dealings,
financial status and charitable donations.

22 Id. at § 6881. Despite this attempt to couch the Act as an informational device to be
23 applied equally to all candidates, however, the legislative history and statements made
24 by state legislators during its consideration strongly suggest it was primarily intended to
25 force President Trump to disclose his tax returns.³ Indeed, at oral argument counsel for

26 ³ Trump has made extensive disclosures of his personal financial information in accordance with
27 the provisions of EIGA, but has never disclosed his tax returns themselves. Additionally, when he
announced his candidacy for reelection in 2020, Trump reiterated that he would not disclose his filings
28 prior to either the 2020 primary or general elections. See Pl. Melendez' Mot., 19-cv-01506-MCE-DB, ECF
No. 17-1, 6:12-17.

1 the State expressly conceded that the Act “was prompted by President Trump’s refusal
2 to disclose his tax return when he ran for . . . office.” Transcript of September 19, 2019
3 hearing, ECF No. 37 to Case No. 19-cv-1477-MCE-DB, 55:12-15. Likewise, State
4 Senator Mike McGuire, who co-sponsored the Act in the California Senate, has
5 unequivocally indicated that “it will make presidential tax returns public in [California] just
6 in time for the 2020 election.” Pl. Melendez’ Mot., 19-cv-01506-MCE-DB, ECF No. 17-1,
7 at 5:26-27; 6:5-6. McGuire has further stated that “President Trump, if he truly doesn’t
8 have anything to hide, should step up and release his tax returns.” Id. at 5:28-6:1.

9 Defendants also describe the Act as having been enacted in response to
10 President Trump’s “break” from “customary practice” in choosing not to disclose his
11 returns. See Defs.’ Omnibus Opp, 3:22-24. But such production has hardly been
12 universal. Between 1913, when income taxes were instituted, and 1973, when President
13 Nixon opted to disclose his returns after portions were leaked, no sitting President
14 elected to furnish his returns. Melendez Mot. at 2:21-22. In addition, Nixon’s successor,
15 Gerald Ford, opted to disclose only a summary of his taxes. Id. at 2:25. Nor have
16 presidential candidates universally released their tax filings. For example, in 1992,
17 former California Governor Jerry Brown, then a candidate for the Democratic nomination
18 for President, elected not to disclose his returns. Ross Perot similarly declined to
19 disclose that same year, and in 2000, Ralph Nader also decided against disclosure. Id.
20 at 2:28-3:8. Consequently, the State’s argument that the California Legislature passed
21 the Act “to codify a custom followed by presidential candidates in the past five decades”
22 is disingenuous. Defs.’ Opp., 1:6.

23 Against this backdrop, it is no surprise that the one other time California
24 attempted to pass a law such as the one challenged here, shortly after President
25 Trump’s election, it was unsuccessful. More specifically, in 2017, the California
26 Legislature passed a bill known as SB 149 that, like the Act, would have required
27 candidates to release their returns as a precondition for appearing on the California
28 primary ballot. In analyzing that legislation before it came to a vote, however,

1 California's Office of the Legislative Counsel—a nonpartisan public agency—"concluded
2 that [SB 149] would be unconstitutional if enacted." Cal. Comm. on the Judiciary Report,
3 Senate, March 11, 2019 at 5 (citing Ops. Cal. Legis. Counsel, No. 1718407 (Sept. 7,
4 2017)). Regardless, the Legislature approved the bill anyway and sent it to then-
5 Governor Jerry Brown for his signature. Governor Brown then vetoed the legislation,
6 articulating his many reservations as follows:

7 This bill is a response to President Trump's refusal to release
8 his returns during the last election. While I recognize the
9 political attractiveness – even the merits – of getting President
10 Trump's tax returns, I worry about the political perils of
11 individual states seeking to regulate presidential elections in
12 this manner. First, it may not be constitutional. Second, it sets
a 'slippery slope' precedent. Today we require tax returns, but
what would be next? Five years of health records? A certified
birth certificate? High school report cards? And will these
requirements vary depending on which political party is in
power?

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14 Governor Jerry Brown, Governor's Veto Message, SB 149, available at
15 https://leginfo.legislature.ca.gov/faces/billStatusClient.xhtml?bill_id=201720180SB149.
16 He concluded that conditioning ballot access on the disclosure of tax returns might
17 infringe upon settled constitutional rights, stating that "[a] qualified candidate's ability to
18 appear on the ballot is fundamental to our democratic system." Id. Accordingly, he
19 "hesitate[d] to start down a road that well might lead to an ever escalating set of differing
20 state requirements for presidential candidates." Id.

21 Despite both Governor Brown's warning and the Legislative Counsel's earlier
22 admonition, the lead authors of SB 149 announced their intent to reintroduce the bill
23 when California had a new Governor. See McCarthy Decl, Case No. 2:19-cv-01501-
24 MCE-DB, ECF No. 10-2, ¶¶ 5-6. And follow through they did, introducing the present
25 Act on December 3, 2018, less than a month after Governor Newsom was elected to
26 office. Like its predecessor, the Act was again denominated as "the Presidential Tax
27 Transparency and Accountability Act" and contained the same material provisions as the
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earlier SB 149, requiring partisan candidates to submit their tax returns from the five previous years in order to appear on the primary ballot.⁴

Significantly, although no other state has enacted a requirement such as the one at issue here,⁵ California pushed the envelope even further by passing the Act as an “urgency statute” that would go into effect immediately.⁶ The Act was deemed “urgent” in this regard even though California had been conducting presidential primary elections without a tax disclosure requirement since the dawn of American income taxes more than one hundred years prior.

Given the current date for California’s 2020 presidential primary, and the fact that under the terms of the Act tax returns must be released 98 days beforehand, absent injunctive relief, partisan candidates must disclose their taxes by November 26, 2019, in order to appear on the California primary. The instant motions seek to enjoin that requirement.

STANDARD

“A preliminary injunction is an extraordinary and drastic remedy.” Munaf v. Geren, 553 U.S. 674, 690 (2008). “[T]he purpose of a preliminary injunction is to preserve the status quo between the parties pending a resolution of a case on the merits.” McCormack v. Hiedeman, 694 F.3d 1004, 1019 (9th Cir. 2012). A plaintiff seeking a

⁴ The Act differs somewhat from SB 149 in that the former contains more specific directions on how candidates must present their tax returns to the California Secretary of State. In addition, the Act also applies to state gubernatorial candidates who wish to participate in the primary election. All parties agreed at the September 19, 2019, hearing, however, that the present challenges pertains only to the Act's application to presidential primaries.

⁵ On May 1, 2017, Governor Chris Christie vetoed a similar bill, S3048, passed by the New Jersey Legislature. Melendez Mot., 3:24-25.

⁶ The California Constitution normally provides for new laws to “go into effect on January 1 next following a 90-day period from the date of enactment of the statute (Cal. Const., art. IV, § 8(c)(1), but by denominating the statute as one of urgency “necessary for immediate preservation of the public peace, health, or safety” (*id.* at § 8(c)(3), 8(d)), the Act applied immediately and in time for California’s March 3, 2020 primary.

1 preliminary injunction must establish that he is (1) “likely to succeed on the merits;”
2 (2) “likely to suffer irreparable harm in the absence of preliminary relief;” (3) “the balance
3 of equities tips in his favor;” and (4) “an injunction is in the public interest.” Winter v.
4 Natural Res. Defense Council, 555 U.S. 7, 20 (2008); see also Short v. Trown, 893 F.3d
5 671, 675 (9th Cir. 2018). “If a plaintiff fails to meet its burden on any of the four
6 requirements for injunctive relief, its request must be denied.” Sierra Forest Legacy v.
7 Rey, 691 F. Supp. 2d 1204, 1207 (E.D. Cal. 2010) (citing Winter, 555 U.S. at 22). “In
8 each case, courts ‘must balance the competing claims of injury and must consider the
9 effect on each party of the granting or withholding of the requested relief.’” Winter,
10 555 U.S. at 24 (quoting Amoco Prod. Co. v. Gambell, 480 U.S. 531, 542 (1987)). A
11 district court should enter a preliminary injunction only “upon a clear showing that the
12 plaintiff is entitled to such relief.” Winter, 555 U.S. at 22 (citing Mazurek v. Armstrong,
13 520 U.S. 968, 972 (1997)).

14 Alternatively, under the so-called sliding scale approach, “[t]he Ninth Circuit
15 weighs [the above] factors on a sliding scale”, so that where there are “‘serious
16 questions going to the merits’ --- that is, less than a ‘likelihood of success’ on the merits -
17 -- a preliminary injunction may still issue so long as ‘the balance of hardships tips sharply
18 in the plaintiff’s favor’ and the other two factors are satisfied.” Short v. Brown, 893 F.3d
19 671, 675 (9th Cir. 2018).

20 Where the moving party alleges constitutional violations, including violations of
21 rights secured by the First Amendment, they must make a “colorable claim” that their
22 rights have been infringed or threatened with infringement, but upon this showing “the
23 burden shifts to the government to justify the restriction.” Thalheimer v. City of
24 San Diego, 645 F.3d 1109, 1117 (9th Cir. 2019) (citing Klein v. City of San Clemente,
25 584 F.3d 1196, 1201 (9th Cir. 2009)).

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ANALYSIS

The Court appreciates the State's desire for transparency in the political process. Requiring candidates to disclose tax returns could shed light on sources of income, potential conflicts of interest, and charitable tendencies. This information is important to a voter's ability to evaluate how a candidate's financial interests might affect future decision making. For example, in what entities or countries have candidates invested? Where have they donated? Who do they owe? These concerns are both legitimate and understandable,⁷ but are undermined when candidates offer unnecessary and irrelevant excuses for shielding the public from such information.

It is not the job of the courts, however, to decide whether a tax return disclosure requirement is good policy or makes political sense. Those are questions delegated to the political branches of the federal government, that is Congress and the President, under Articles I and II of the United States Constitution. Those are the branches that make the law. Article III Courts such as this one, on the other hand, are tasked with interpreting the law and evaluating whether laws passed by the other two branches of federal government or by the states are constitutional in the first place. The job of the federal courts is therefore to follow the law and to decide questions based on the United States Constitution, which is the only thing the Court is being asked to do in these cases. Courts created under Article III of the United States Constitution are not concerned with political victories or who may or may not "win." Instead, it is the Court's job to make sure the Constitution wins. To that end, while this Court understands and empathizes with the motivations that prompted California to pass the Act, it concludes that a preliminary injunction should nonetheless issue because the Act's provisions likely violate the Constitution and the laws of the United States.

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⁷ In fact, these are some of the same considerations our nation takes into account when evaluating individuals who have been confirmed by the United States Senate for security clearances.

1 **A. Likelihood of Success on the Merits**

2 **1. Qualifications Clause**

3 The Presidential Qualifications Clause of the United States Constitution sets forth
4 the eligibility requirements for the Office of President:

5 No person except a natural born Citizen . . . shall be eligible to
6 the Office of President; neither shall any person be eligible to
7 that Office who shall not have attained to the Age of thirty five
Years, and been fourteen Years a Resident within the United
States.

8 U.S. Const., art. II, § 1, cl. 5.

9 The United States Supreme Court analyzed the Constitution's Qualifications
10 Clauses in the seminal case, U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779 (1995).
11 There the Court held that the Framers intended the foregoing language to "fix as
12 exclusive the qualifications in the Constitution," "thereby divest[ing] States of any power
13 to add qualifications." Id. at 801, 806. The Court reasoned that "the text and structure of
14 the Constitution, the relevant historical materials, and, most importantly, the "basic
15 principles of our democratic system' all demonstrate that the Qualifications Clauses were
16 intended to preclude the States from exercising any such power" Id. at 806.
17 Significantly, the Court rejected any notion that a state can cloak an otherwise
18 impermissible qualification as a ballot access issue subject to regulation by the states
19 under the Elections Clause,⁸ stating that states cannot indirectly create new eligibility
20 requirements by "dressing eligibility to stand for [public office] in ballot access clothing."
21 Id. at 831.

22 Factually, the Term Limits Court was confronted with an amendment to the state
23 constitution of Arkansas which would have prohibited any candidate having served more
24 than three years in the United States House of Representatives, or two years in the
25 United States Senate, from appearing on the state's general election ballot for federal
26 congressional office. The Court held this attempt to alter federal eligibility

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28 ⁸ The Elections Clause allows states to set the "times, places and manner" of holding elections.
U.S. Const., art I, § 4, cl. 1.

1 unconstitutional.⁹ In delineating the line between a state's permissible power to craft
2 procedural requirements designed to foster ballot access and its impermissible power to
3 create new substantive qualifications for federal office, the Term Limits Court noted that
4 a statute certainly crosses that line if it "has the likely effect of handicapping a class of
5 candidates and has the sole purpose of creating additional qualifications indirectly." Id.
6 at 836.

7 The Ninth Circuit, in Schaefer v. Townsend, 215 F.3d 1031 (9th Cir. 2000), further
8 illuminated the applicable standard by explaining that a statute creates a new,
9 unconstitutional qualification for federal office if it either "create[s] an absolute bar to
10 candidates who would otherwise qualify," or "ha[s] the likely effect of handicapping an
11 otherwise qualified class of candidates." Id. at 1035. The regulation at issue there
12 required that candidates for federal office be registered voters, and therefore residents of
13 the State of California, at the commencement of any candidacy for federal office.
14 California took the position that the regulation was a mere ballot access restriction
15 passed under its authority to regulate the time, place, and manner of federal elections.
16 There, as here, the State argued that it had the power to adopt "generally-applicable and
17 evenhanded restrictions that protect the integrity and reliability of the electoral process
18 itself." Id. at 1037 (quoting Anderson v. Celebrezze, 460 U.S. 780, 788 (1983)).

19 That court disagreed. According to the Ninth Circuit, regulations passing
20 constitutional muster under the Elections Clause regulated election procedures only and
21 "did not even arguably impose any substantive qualification rendering a class of potential
22 candidates ineligible for a ballot position." Id. at 1038 (citing Term Limits, 514 U.S. at
23 835). While control over the procedural aspect of an election or requiring a candidate to

24 ⁹ The Term Limits Court noted that the provision at issue there applied only to congressional office
25 under Article I of the Constitution, but it strongly intimated that the same rationale applied with just as
26 much force to the Qualifications Clause of Article II. Indeed, the Court made clear that states "have just as
27 much right, and no more, to prescribe new qualifications for a representative, as they have for a
28 president." Id. at 803. Moreover, the Court observed that the Qualifications Clauses "reflect the idea that
the Constitution treats both the President and Members of Congress as federal officers" over which the
states only have delegated, as opposed to reserved, powers. Id. at 805 n. 17. The fact that the Term
Limits Court referred to "Qualifications Clauses" in the plural further suggests that its reasoning applies
equally to presidential qualifications.

1 show a minimum level of support before running (and potentially crowding the ballot)¹⁰
2 may be permissible, Schaefer found that the residency requirement before it was not.
3 Instead, it plainly handicapped those candidates who did not comply and had the effect
4 of deterring them from running. Id.

5 Similarly, although the Act challenged in this case does not present an absolute
6 bar to candidates running for office, it is equally clear that, like in Schaefer, it has the
7 likely effect of “handicapping” non-disclosing candidates. The Act has nothing to do with
8 the extent of support a candidate may enjoy and plays no role in ensuring that
9 procedural integrity of the election. To the contrary, it prevents a number of candidates
10 from appearing on the primary ballot absent disclosure of their tax returns, and in so
11 doing impairs their ability to win California’s Republican presidential primary election, to
12 obtain the support of California’s delegates to the Republican National Convention, and
13 to secure the party’s nomination for President. This complete denial of ballot access
14 constitutes a severe handicap because “there is no denying that the ballot restrictions
15 will make it significantly more difficult for the barred candidate to win the election.”
16 514 U.S. at 831.¹¹ It follows that barring candidates in this manner is the type of burden
17 that “demands serious constitutional scrutiny.” Short v. Brown, 893 F.3d at 677.

18 The State’s Claim that the Act is a procedural “times, places and manner”
19 requirement permissible under the Elections Clause is simply not viable. Unsurprisingly,
20 the Term Limits Court held that the Elections Clause implicitly prohibits states from
21 enacting provisions designed to benefit or to hinder certain candidates. Term Limits,
22 514 U.S. at 833-34 (“[T]he Framers understood the Elections Clause as a grant of

23 ¹⁰ See, e.g., Lubin v. Panish, 415 U.S. 709, 715, 718-19 (1974) (a state may restrict ballot access
24 to eliminate as many “frivolous candidacies” as possible by requiring candidates to “demonstrat[e] the
25 existence of some reasonable quantum of voter support” through, for example, petitions signed by voters);
26 Ill State Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 185 (1979) (“[W]e have upheld properly
drawn statutes that require a preliminary showing of a significant modicum of support before a candidate
or party may appear on the ballot.”).

27 ¹¹ While the State argues that the disclosure requirement does not apply to the general election,
28 that distinction does not save the Act since the Supreme Court has long held that constitutional
requirements apply just as squarely to primaries as they do to the general election. See Tashjian v.
Republican Party, 479 U.S. 208, 227 (1986).

1 authority to issue procedural regulations, and not as a source of power to dictate
2 electoral outcomes, to favor or disfavor a class of candidates, or to evade important
3 constitutional restraints") (emphasis added). The procedural grant of power to the states
4 extended by the Elections Clause instead "encompasses matters like 'notices,
5 registration, supervision of voting, protection of voters, prevention of fraud and corrupt
6 practices, counting of votes, duties of inspectors and canvassers, and making and
7 publication of election returns." Cook v. Gralike, 531 U.S. 510, 523-24 (2001) (citing
8 Smiley v. Holm, 285 U.S. 355, 366 (1932)).

9 To the extent the Act mandates disclosure of tax returns to qualify for the
10 presidential primary, it does none of those things and, despite Defendants' best efforts, it
11 simply cannot be characterized as procedural. Its provisions do not pertain to the
12 administration of an election (e.g., reducing ballot clutter by excluding candidates without
13 sufficient electoral support). Nor can it be considered an even-handed restriction to
14 "protect the integrity and reliability of the electoral process itself" or to ensure "orderly,
15 fair, and honest elections" by providing financial information to voters. Term Limits,
16 514 U.S. at 834. If this was truly the State's even-handed objective, it presumably would
17 have passed some version of the Act in 1992, when former California Governor Jerry
18 Brown elected not to release his tax returns while running for the Democratic nomination
19 for President. At base, the Act seeks to punish a class of candidates who elect not to
20 comply with disclosing their tax returns by handicapping their access to the electoral
21 process.¹² This is plainly impermissible.

22 The Supreme Court's decision in Cook v. Gralicke, 531 U.S. 510 (2001), is also
23 helpful in underscoring the conclusion that this Act is constitutionally impermissible. In
24 that case, Missouri passed an initiative that required ballots to disclose whether federal

25 ¹² The State's argument that a "class of constitutional concern" must be identified in order to entitle
26 a group of candidates to qualify for such protection, and that no qualifying class in that respect has been
27 identified here, is unpersuasive. Defs.' Opp, 8:25-27. Despite the State's contention, no authority for any
28 such limitation has been identified. Instead, by barring all qualifications other than those set out in the
Constitution, the Framers exhibited concern for all "candidates who would otherwise meet the
requirements of the Qualifications Clause." Schaefer, 215 F.3d at 1035. To read the phrase "class of
constitutional concern" otherwise would nullify the Qualifications Clause.

1 candidates for the House and Senate supported Congressional term limits. Id. at 514.
2 Missouri defended its legislation on grounds that it “merely regulated the manner in
3 which elections are held by disclosing information about congressional candidates” and
4 consequently was a valid exercise of Missouri’s delegated power under the Elections
5 Clause. Id. at 523. The Supreme Court disagreed, finding that the law bore “no relation
6 to the ‘manner’ of elections as we understand it.” Id. Instead, the law was “plainly
7 designed to favor candidates” supporting term limits in an attempt to handicap those
8 candidates who did not. Id. at 524. According to the Court, the Constitution’s grant of
9 power to the states “to prescribe the procedural mechanisms for federal elections” does
10 not include the ability “to dictate electoral outcomes, to favor or disfavor a class of
11 candidates, or to evade important constitutional constraints.” Id. at 523.

12 Moreover, the Court pointed out, “by directing the citizen’s attention to the single
13 consideration of the candidate’s fidelity to term limits,” the Missouri law implied that the
14 issue was “an important—perhaps paramount—consideration in the citizen’s choice.” Id.
15 at 525. It, therefore, could potentially, “decisively influence the citizen to cast his ballot
16 against candidates branded as unfaithful” to the idea of term limits. Id. Similarly in this
17 case, the Act draws undue attention to that class of candidates electing not to disclose
18 their tax returns, and by so doing operates to brand them as inferior. As such, the Act
19 imposes an additional substantive qualification beyond the exclusive confines of the
20 Qualifications Clause and is likely invalid on that basis as well.

21 Furthermore, from a practical perspective, allowing individual states to potentially
22 adopt disparate and inconsistent qualifications for presidential primary candidates
23 tramples the Framers’ vision of having uniform standards for the qualifications of those
24 individuals running for President. Former California Governor Jerry Brown’s admonition
25 in vetoing the Act’s earlier iteration is particularly instructive on this point. If allowed to
26 stand, the Act would potentially open the floodgates permitting each state to foreclose
27 ballot access to presidential candidates on various alleged informational grounds. The
28 Court can easily foresee this extending far beyond tax information to the disclosure of

1 confidential medical records, psychiatric and therapist records, academic records, family
2 law records, or other privileged information.¹³ The list of allegedly “relevant” information
3 required to obtain ballot access could therefore snowball out of control with no practical
4 limitation as legislatures throughout the nation could impose their own qualifications on
5 presidential candidates, perhaps for nakedly political purposes. That result cannot
6 possibly comport with the Framers’ goal for a fixed and nationwide standard for such
7 federal offices.

8 Finally, in this day and age of partisan politics, evaluating the constitutionality of
9 the Act is one of the most non-partisan questions of which the Court can conceive. At
10 oral argument, there were repeated references to this being a “Republican” issue, but
11 the protections afforded by the Qualifications Clause extend to all candidates
12 irrespective of their political affiliation. While this case concerns a law passed by a
13 Democratic majority in the California Legislature, and while it fundamentally targets a
14 Republican presidential candidate, in a different political climate or a different state the
15 roles and putative requirements could easily be reversed. The dangerous precedent set
16 by this Act, allowing the controlling party in any state’s legislature to add substantive
17 requirements as a precondition to qualifying for the state’s presidential primary ballot,
18 should concern all candidates alike, Republican, Democrat, or otherwise. It certainly
19 concerns the Court. But ultimately, neither the Constitution nor the Court are concerned
20 with which party a candidate or voter most closely aligns. As such, for all of the reasons
21 set forth above, the Court finds that Plaintiffs are likely to prevail on their contention that
22 the Act violates that Clause.

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25 ¹³ It is not difficult to imagine that a state could find, for example, just as compelling a reason to
26 force release of a candidate’s mental and physical health records for “informational” purposes, particularly
27 where a candidate might be older or have some preexisting health concerns. The troubling minefield this
28 presents is all too apparent in terms of permitting each state to make its own informational demands.
While there is little analytical difference in terms of the Act’s stated “informational” purpose from the
alleged “information” that such records might provide, the invasion of privacy concerns would make any
such mandate almost assuredly unconstitutional.

2. First Amendment Rights of Association and Ballot Access

13 According to Plaintiffs, by barring partisan presidential candidates who decline to
14 release their tax returns from appearing on the California primary ballot, the Act imposes
15 a severe burden on voters' ability to access the ballot and vote for the candidate of their
16 choice. Additionally, President Trump further claims that the Act similarly burdens his
17 ability to appear on the Republican primary ballot and to associate with Republican
18 voters in California. The Trump Campaign as well as the Republican National
19 Committee and the California Republican Party make similar arguments.

To evaluate these arguments, the Court applies the so-called Anderson/Burdick test established by the Supreme Court in Anderson v. Celebrezze, 460 U.S. 780 (1983) and Burdick v. Takushi, 504 U.S. 428 (1982). To the extent that voting rights “are subjected to ‘severe’ restrictions, the regulation must be ‘narrowly drawn to advance a state interest of compelling importance,’” with a strict level of scrutiny therefore imposed. Burdick, 504 U.S. at 434 (quoting Norman v. Reed, 502 U.S. 279, 289 (1992)). Should the restriction at issue trigger less than strict scrutiny, a balancing test is instead employed. Courts must weigh 1) the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments; 2) the precise interests

1 and justifications put forward by the state for the imposed ballot restriction; and 3) the
2 extent to which the state's interests make it necessary to burden the plaintiff's rights.
3 See Anderson, 460 U.S. at 789. Even restrictions that impose a lesser burden in this
4 regard must be reasonably related to furthering the state's important regulatory interests.
5 Chamness v. Bowen, 722 F.3d 1110, 1116, (9th Cir. 2013). To the extent the
6 presidential race is national in scope, a state's interests in regulating presidential
7 elections is weaker than for purely statewide elections. Anderson, 460 U.S. at 795.¹⁴

8 Here, the Act creates what amounts to a functional bar against the ability to cast
9 an effective vote for a candidate who elects not to disclose his or her tax returns. It
10 further interferes with the ability of both individuals and political parties to select the
11 individual presidential candidate of their choice to act as the "standard bearer who best
12 represents [their] ideologies and preferences." Eu v. San Francisco Democratic Comm.,
13 489 U.S. 214, 224 (1989).¹⁵ In this case that includes the incumbent President of the
14 United States. These are severe restrictions, since limitations on ballot access can
15 violate multiple constitutionally-protected interests, including the right to associate for
16 political purposes, the right to vote, and the right to express political preferences.¹⁶

17 ¹⁴ While the State disagrees, insisting that 'the Act regulates only California's presidential primary
18 election, the result of which is determined by in-state voters' (Defs.' Opp, 11:21-23), that argument misses
19 the mark. As a practical matter, presidential primaries impact the primaries in other states and therefore
20 impact the general election as well. Indeed, California's recent change in moving its primary from June to
March appears in part to have been intended to garner more say in the national nominating process. See
SB 568 Primary Elections: Election Date, California Legislative Information, "Bill Analysis" Tab, Assembly
Floor Analysis 2 (Sept. 13, 2017).

21 ¹⁵ It is also no small matter that where, as here, the limitation on ballot access involves a
candidate at the top of the primary ticket in California. A restriction on the ability to vote for that candidate
22 could likely depress the party's voter turnout in general, and therefore adversely affect down-ballot
congressional and state-level candidates as well. This is particularly true in California since voters
23 approved a "Top Two Primary" system, where the two candidates receiving the most votes in the primary
proceed to the general election regardless of their party affiliation. See Bryant Decl., Case No.19-cv-1506-
24 MCE-DB, ECF No. 17-3, ¶¶ 11-13.

25 ¹⁶ The State nonetheless contends that any burden is only "slight" because all candidates are able
to disclose their financial interests if they choose to do so. But that is not the point. The logistical burdens
26 of disclosure in this case are minimal compared to the burden of constitutional concern, which is forcing
candidates to make the choice between running for President and disclosing their tax returns. See
27 Schaefer, 215 F.3d at 1037 (forcing out-of-state candidates to choose between relocating or being barred
from the ballot constituted an impermissible qualification). States cannot avoid the First Amendment's
28 protections by disingenuously characterizing a condition as "voluntary," when it is fact coerced. See Term
Limits, 514 U.S. at 829 ("As we have often noted, constitutional rights would be of little value if they could

1 III. State Bd. Of Elections, 440 U.S. at 184; Chamness, 722 F.3d at 1116 (a measure
2 which “significantly impairs” ballot access “imposes a severe First Amendment
3 restriction”).¹⁷ As such, they are subject to strict scrutiny.

4 The fact that a candidate can still conceivably qualify for the primary as a write-in
5 or independent candidate does not change that calculus. See Anderson, 460 U.S. at
6 799 n.26 (“We have previously noted that [a write-in] opportunity is not an adequate
7 substitute for having the candidate’s name appear on the printed ballot.”); Term Limits,
8 514 U.S. at 831 (“[E]ven if petitioners are correct that incumbents may occasionally win
9 reelection as write-in candidates, there is no denying that the ballot restrictions will make
10 it significantly more difficult for the barred candidate to win the election.”).

11 Nor can Defendants show that the Act is either narrowly drawn or serves a
12 compelling state interest. To the extent that the State argues that a candidate’s asserted
13 “choice” in deciding whether to disclose tax returns makes the restriction narrow in
14 scope, the Supreme Court’s decision in Cook is instructive. There, as indicated above,
15 the Supreme Court struck down a Missouri constitutional amendment which directed the
16 Secretary of State to identify on the ballot those candidates who did not support federal
17 term limits. That was also a “voluntary” act that the Court struck down as
18 unconstitutional. Yet this case goes even further in keeping a candidate’s name off the
19 ballot entirely, and Cook’s finding of unconstitutionality therefore applies with even more
20 force here.

21 Moreover, the Cook Court also rejected the argument that Missouri’s purported
22 objective in educating or notifying voters as to a candidate’s stance on terms limits was
23 compelling. While a state may educate voters as to the “procedural mechanisms” for

24 be indirectly denied”). Moreover, the fact that candidates may be able to disclose their tax returns if they
25 so choose does not change the fact that voters also have a First Amendment right to associate with and
nominate candidates who refuse to do so.

26 ¹⁷ Requiring presidential candidates to disclose tax returns in order to exercise First Amendment
27 rights to access voters is a severe burden both because of the fundamental nature of those rights and
since, as the Ninth Circuit has recognized, “[a] tax return and related information contains many intimate
28 details about the taxpayer’s personal and financial life” to which a taxpayer has a right of privacy. United
States v. Richey, 924 F.2d 857, 861 (9th Cir. 1991).

1 federal elections, they cannot “dictate electoral outcomes, to favor or disfavor a class of
2 candidates” or “evade important constitutional restraints” under the guise of voter
3 education. Cook, 531 U.S. at 531. In this case, the State’s interest in doing so in the
4 first place is further weakened by the fact that the Act purports to restrict access to the
5 federal presidential primary, where it “has a less important interest” in regulation than in
6 statewide or local elections since the outcome of the race “will be largely determined by
7 voters beyond the State’s boundaries.” Anderson, 460 U.S. at 795.¹⁸ At the end of the
8 day a voter can simply decline to vote for a candidate who chooses not to release his or
9 her tax returns. Simply allowing voters to make that choice without further interference is
10 clearly the narrowest, and least intrusive, approach of all.

11 The State’s professed interest in voter education is somewhat specious in any
12 event because it does not extend to all candidates in every scenario. Instead, the Act
13 applies only to party-affiliated candidates (exempting independent and write-in
14 candidates) and affects only the primary, and not the general, election. If California
15 legitimately wanted to “provide voters with essential information regarding the
16 candidate’s potential conflicts of interest” to help them make a more informed decision,
17 as the interest statement contained in Government Code § 6881 indicates, it would keep
18 the tax returns public through the general election and not remove them from the
19 Secretary of State’s website once the primary election concludes. It is also difficult to
20 see how the Act’s mandate in directing production of tax returns is “narrowly drawn” to
21 protect the state’s purported interest in ensuring that voters are informed as to potential
22 conflicts of interest when the provisions of EIGA already require candidates to submit
23 detailed financial information concerning the extent of income, gifts and property
24 holdings as well as the identification of any positions held in a business enterprise. See
25 5 U.S.C.A. Appx. 4, § 102. The State has not identified anything missing on an EIGA
26 disclosure that could be found on a tax return to serve the Act’s purported interests.

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28 ¹⁸ The fact that states have more leeway in regulating congressional elections under the Elections
Clause than they do in presidential elections is therefore not surprising. See, e.g., Arizona v. Inter Tribal
Council of Arizona, Inc., 570 U.S. 1, 8 (2013); Rucho v. Common Cause, 139 S. Ct. 2484, 2495 (2019).

1 Accordingly, the Court concludes that Plaintiffs are likely to prevail on their claim that the
2 Act violates their First Amendment rights to freedom of association and ballot access.

3 **3. Equal Protection under the Fourteenth Amendment**

4 The Fourteenth Amendment's Equal Protection Clause guarantees that “[n]o state
5 shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S.
6 Const., amend. XIV, § 1. Two of the related cases, filed on behalf of the Griffin and
7 Melendez Plaintiffs (Case Nos. 2:19-cv-1477-MCE-DB and 2:19-cv-1506-MCE-DB,
8 respectively), argue that the Act is unconstitutional to the extent it requires a political
9 party's candidates for President to disclose his or her tax returns in the primary election
10 but exempts independent candidates from doing so. By distinguishing among
11 constitutionally eligible candidates for President in that manner, Plaintiffs argue that the
12 Act imposes greater burdens on the voting and associational rights of California voters
13 who support major party candidates than those who support independents. According to
14 Plaintiffs, this triggers equal protection concerns. See Lubin v. Panish, 415 U.S. at 716
15 (“The right of a party or an individual to a place on the ballot is entitled to protection and
16 is intertwined with the rights of voters”); see also Matsumoto v. Pua, 775 F.2d 1393,
17 1396 (9th Cir. 1985).

18 In Anderson, the Supreme Court cautioned courts to carefully scrutinize laws
19 which impose “burden[s] that fall unequally on major-party and independent candidates.”
20 460 U.S. at 793-94; see also Soltysik v. Padilla, 910 F.3d 438, 446 (9th Cir. 2018)
21 (recognizing that plaintiff had stated valid equal protection claim where state law
22 imposed an “unequal burden” on independent as opposed to party-affiliated candidates).
23 While distinctions in how the two groups are treated may be permissible, that is only the
24 case where those distinctions are constitutionally relevant. Jenness v. Fortson, 403 U.S.
25 431, 441 (1971) (recognizing that the needs and potential of a political party with
26 historically broad support differ from a new or broad political organization, and that
27 consequently the latter may be exempt from having to establish all the criteria of a well-
28 established party in order to participate in primaries).

1 The Ninth Circuit has recognized, however, that independent candidates seeking
2 to run in the general election are “essentially similar” to partisan candidates seeking to
3 run in a party primary. Van Susteren v. Jones, 331 F.3d 1024, 1027 (9th Cir. 2003).
4 Accordingly, there is no basis for subjecting the two groups to different burdens. The
5 State lacks any valid interest in providing voters with more information about party-
6 backed candidates than independent candidates, especially when such requirements
7 can lead to the exclusion of only major party candidates from the ballot. Consequently,
8 Plaintiffs are likely to succeed in demonstrating that the differing burdens are
9 unconstitutional under the Equal Protection Clause as well.

10 **4. Preemption by the Ethics in Government Act (“EIGA”)**

11 Finally as to the merits, and as already mentioned above, Title I of EIGA provides
12 for the disclosure of “source, type, and amount or value of income”; honoraria from any
13 source; dividends, rents, interest, and capital gains, and interests in property; the “entity
14 and category of value of the total liabilities owed to any creditor”; and the identity of all
15 positions held “as an officer, director, trustee, partner, proprietor, representative,
16 employee, or consultant of any corporation, company, firm, partnership, or other
17 business enterprise, any nonprofit organization, any labor organization, or any
18 educational or other institution.” See generally 5 U.S.C.A. App. 4, § 102. Title I of the
19 EIGA also protects candidates from the need to make different or additional disclosure
20 by expressly displacing all other similar federal or state disclosure laws. It expressly
21 “supersede[s] any general requirement under any other provision of law or regulation
22 with respect to the reporting of information required for purposes of preventing conflicts
23 of interest or apparent conflicts of interest.” Id. at § 107(b).

24 Like EIGA, by requiring production of a candidate’s tax returns for the preceding
25 five years, the Act also purports to provide for the disclosure of extensive financial
26 information by candidates running for President, with one of its chief purposes being “to
27 provide voters with essential information regarding the candidates’ potential conflicts of
28 interest, business dealings, financial status, and charitable donations.” Cal. Elec. Code

1 § 6881. As such, according to the Trump Plaintiffs, the Act is plainly a “law or regulation
2 with respect to the reporting of information required for purposes of preventing conflicts
3 of interest” as described by EIGA, and by EIGA’s express provisions it is preempted.

4 The State nonetheless claims that because § 107(b) makes no explicit reference
5 to preemption of state law, and because a previous version of the statute did explicitly do
6 so in another context, no preemptive intent should be inferred. See Defs.’ Opp., 27:21-
7 28:11. In this regard, the State cites a presumption against preemption, in fields
8 traditionally occupied by the states, unless the clear and manifest purpose of Congress
9 suggests otherwise.

10 Defendants’ statement of the law may be correct, but it has no bearing here
11 because regulation of federal officeholders is clearly not a field traditionally occupied by
12 the states. Moreover, although the words “state” and “preemption” appear nowhere in
13 the text of § 107(b), the statute is nonetheless unambiguous. Congress clearly intended
14 that the EIGA “supersede” state laws touching on the field of financial disclosures and
15 conflict-of-interest laws for federal officeholders. “Supersede” means to “[o]bliterate, set
16 aside, annul, replace, make void, ineffectual or useless, repeal.” See Black’s Law
17 Dictionary (6th ed. 1990). Section 107(b) of EIGA therefore “set[s] aside” and
18 “replace[s]” “any general requirement under any other provision of law or regulation with
19 respect to the reporting of information required for purposes of preventing conflicts of
20 interest or apparent conflicts of interest.” By using the expansive term “any” with the
21 phrase “other provision of law or regulation,” the plain and ordinary language of EIGA
22 unambiguously gives it preemptive force over the Act.¹⁹ Plaintiffs are accordingly likely
23 to prevail on the merits with respect to EIGA preemption as well.

24 **B. Irreparable Harm**

25 Moving on to the remaining inquiries in evaluating whether preliminary injunctive
26 relief is warranted, the Court turns first to irreparable harm. The Ninth Circuit has long

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28 ¹⁹ Given the statute’s plain and ordinary meaning, any resort to legislative history is unnecessary.
See Conn. Nat’l Bank v. Germain, 503 U.S. 249, 254 (1992).

1 recognized that constitutional violations in general constitute irreparable harm. See,
2 e.g., Stormans, Inc. v. Stelecky, 586 F.3d 1109, 1138 (9th Cir. 2009) (“constitutional
3 violations cannot be adequately remedied through damages” and therefore generally
4 constitute irreparable harm); Goldie’s Bookstore, Inc. v. Super. Ct., 739 F.2d 466, 472
5 (9th Cir. 1984) (an alleged constitutional infringement by deprivation of equal protection
6 “will often alone constitute irreparable harm.”). This is particularly true in cases, like this
7 one, challenging candidate qualifications restricting ballot access. See Matsumoto,
8 775 F.2d at 1395-96. The rationale for such a finding is simple: “If the plaintiffs lack an
9 adequate opportunity to gain placement on the ballot for this year’s election, this
10 infringement on their rights cannot be alleviated after the election.” Council of Alternative
11 Political Parties v. Hooks, 121 F.3d 876, 883 (3d Cir. 1997).

12 The Ninth Circuit has further emphasized that “the loss of First Amendment
13 freedoms, for even minimal periods of time, unquestionably constitutes irreparable
14 injury.” Klein v. City of San Clemente, 584 F.3d 1196, 1208 (9th Cir. 2009).

15 Given the findings above that Plaintiffs are likely to prevail in establishing
16 constitutional violations premised on both the Qualifications Clause, First Amendment
17 rights of association and ballot access, and Fourteenth Amendment rights grounded in
18 equal protection, this Court finds that the requisite irreparable harm is present and that
19 this factor weighs in favor of granting a preliminary injunction.

20 **C. Balance of Equities**

21 The balance of equities also weighs in Plaintiffs’ favor. The public interest served
22 by ensuring that individual voters may associate for the advancement of political beliefs
23 and cast a vote for their preferred candidate for President is extraordinary. Williams,
24 393 U.S. at 30-31. The State, on the other hand, “can derive no legally cognizable
25 benefit from being permitted to further enforce an unconstitutional limit on political
26 speech.” Sanders Cnty. Republican Cent. Comm. v. Bullock, 698 F.3d 741, 749 (9th Cir.
27 2012). As the Ninth Circuit has explained, it is “clear that it would not be equitable or in
28 the public’s interest to allow the state . . . to violate the requirements of federal law,

1 especially when there are no adequate remedies available.” Valle del Sol, Inc. v.
2 Whiting, 732 F.3d 1006, 1029 (9th Cir. 2013). Simply raising a “serious First
3 Amendment question[] compels a finding . . . that the balance of hardships tips sharply in
4 Plaintiffs’ favor.” Am. Beverage Ass’n v. City & Cty. Of San Francisco, 916 F.3d 749,
5 758 (9th Cir. 2019). Therefore, a consideration of the balance of equities also points to
6 the propriety of a preliminary injunction in this matter.

7 **D. Public Interest**

8 Finally, as the Ninth Circuit noted in American Beverage, “it is always in the public
9 interest to prevent the violation of a party’s constitutional rights.” Id. at 758. This factor
10 accordingly also weighs in favor of an injunction here.

11

12 **CONCLUSION**

13

14 As set forth above, the Court finds that Plaintiffs are likely to prevail on the merits
15 of their arguments that the Act 1) violates the Presidential Qualifications Clause
16 contained in Article II of the United States Constitution; 2) deprives Plaintiffs of their
17 rights to associate and/or to access the ballot, as guaranteed by the First Amendment of
18 the Constitution; 3) further violates the Constitution’s Equal Protection Clause as set
19 forth in the Fourteenth Amendment; and 5) is preempted by the provisions of EIGA in
20 any event.

21 The Court further finds that Plaintiffs have demonstrated irreparable harm, have
22 shown that the balance of equities weighs in their favor, and have established to the
23 Court’s satisfaction that the public interest tips in favor of enjoining implementation of the
24 Act insofar as it pertains to candidates for President of the United States. Plaintiffs’
25 various Motions for Preliminary Injunction in the related cases are therefore GRANTED.

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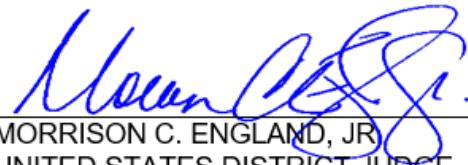
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1 Defendants are hereby ENJOINED from enforcing the provisions of the Presidential Tax
2 Transparency and Accountability Act to the extent they require candidates for the
3 presidency to disclose their tax returns as a condition of appearing on California's
4 presidential primary ballot. See Cal. Elec. Code §§ 6883-6884. No bond will be
5 required.

6 IT IS SO ORDERED.

7 Dated: October 1, 2019


9 MORRISON C. ENGLAND, JR.
10 UNITED STATES DISTRICT JUDGE

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